

**FILED**

02/03/2023

Clerk of the  
Appellate Courts

IN THE COURT OF APPEALS OF TENNESSEE  
AT KNOXVILLE  
January 19, 2023 Session

**CONSERV EQUIPMENT LEASING, LLC v. SCHUBERT ENTERPRISES,  
LLC, ET AL.**

**Appeal from the Chancery Court for Cumberland County  
No. 2021-CH-1966 Ronald Thurman, Chancellor**

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**No. E2022-00535-COA-R3-CV**

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The defendants in this action failed to timely answer the plaintiff's complaint. Upon the plaintiff's motion, the trial court entered judgment by default against the defendants. The defendants moved to set aside the default judgment. The trial court denied the motion to set aside. Because the trial court's order lacked findings of fact and conclusions of law to explain its ruling, we vacate the trial court's determination and remand for sufficient findings of fact and conclusions of law to facilitate appellate review.

**Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Chancery Court  
Vacated; Case Remanded**

JOHN W. MCCLARTY, J., delivered the opinion of the Court, in which D. MICHAEL SWINEY, C.J., and THOMAS R. FRIERSON, II, J., joined.

Joshua Adam Jenkins, Murfreesboro, Tennessee, for the appellants, Schubert Enterprises, LLC and Jackie E. Schubert, Jr.

Beth E. Rogers, Atlanta, Georgia, for the appellee, Conserv Equipment Leasing, LLC.

**OPINION**

**I. BACKGROUND**

On January 8, 2021, Plaintiff Conserv Equipment Leasing, LLC, sent a demand letter to Defendants Schubert Enterprises, LLC and Jackie E. Schubert, Jr. regarding their debts from equipment lease contracts. On January 15, attorney Steve Daniels responded

to the demand letter on Defendants' behalf. He suggested that Defendants be given forty-five additional days for potential financing approval of a loan application and cautioned that Plaintiff's course of action could push Defendants into bankruptcy. Defendants maintain that attorney Daniels simply told them to file for bankruptcy. On January 25, Plaintiff filed in the trial court a verified complaint for damages and petition for writ of possession. On February 10, Defendants were served the complaint. The summons warned as follows:

Your defense must be made within thirty (30) days from the date this summons is served upon you. You are directed to file your defense with the clerk of the court and send a copy to the plaintiff's attorney at the address listed below. If you fail to defend this action by the below date, judgment by default may be rendered against you for the relief sought in the complaint.

Plaintiff's counsel represented in an affidavit that on February 10, Defendants' then-counsel, Dustin Smith, emailed her recognizing that Defendants had been served and making a settlement offer. Plaintiff rejected the settlement offer. In the same manner, Plaintiff's counsel represented that after she rejected attorney Smith's settlement offer, another attorney for Defendants, Kristie Hornsby, contacted Plaintiff by phone on February 17, 2021 to discuss the pending lawsuit and settlement proposals. Around this time, Plaintiff repossessed its equipment collateral.

Plaintiff moved for default judgment on April 8. The motion for default included a notice that the default judgment hearing would be set for April 26. On April 26, Plaintiff filed an amended notice of hearing for May 3. On April 30, Plaintiff's counsel received a call from Mary Beth Hagan stating that she expected to be retained by Defendants on May 3 and requesting a continuance of the default hearing. Plaintiff's counsel agreed to reset the hearing on its motion for default judgment to May 24, but clarified to Defendants' counsel that she was not waiving Plaintiff's right to obtain default judgment.

Three weeks passed. During that time, attorney Joshua Jenkins from the same law firm met with Defendants, reviewed records and the pleadings, and prepared a verified answer which was "fax filed" in the trial court on Friday, May 21 at 3:59 p.m. Defendants' counsel then emailed Plaintiff's counsel who advised that Plaintiff would go forward with the hearing for default judgment. Defendants finally filed their original verified answer on Monday May 24, thirty-three minutes before the default judgment hearing. Defendants did not move for leave to file a late answer. After the May 24 hearing at which Defendants appeared, the trial court entered judgment by default against Defendants pursuant to Tennessee Rule of Civil Procedure 55.01.

On June 23, Defendants moved to set aside the default judgment on the basis of excusable neglect. The parties each submitted briefs. Defendants argued that their default was not willful, that their late answer set out a meritorious defense, and that Plaintiff would not be prejudiced if the default judgment were set aside. Following a hearing on July 29, the trial court orally denied Defendants' motion to set aside default judgment. This ruling was memorialized by order entered August 12 in which the trial court found that "no excusable neglect on behalf of Defendants exists to set aside the default judgment." Plaintiff's counsel drafted the order. Defendants claimed that the August 12 order did not reach them via email. Plaintiff states that Defendants did not check the docket for it. In any event, Defendants missed the deadline to appeal to this Court, so on October 8 they moved to set aside the August 12 order and requested a new order from which a timely appeal could be taken. Following a hearing and by final order entered March 28, 2022, the trial court granted Defendants' motion to set aside the August 12, 2021 order but also re-denied Defendants' motion to set aside the default judgment. Defendants appealed.

## II. ISSUES

Defendants raise two issues on appeal:

A. Whether the trial court's ruling should be reversed "because its order is void of what logic or reasoning the Trial Court employed to reach its decision."

B. Whether the trial court abused its discretion in denying Defendants' motion to set aside the default judgment.

## III. STANDARD OF REVIEW

"In reviewing a trial court's decision to grant or deny relief pursuant to Rule 60.02, we give great deference to the trial court." *Henry v. Goins*, 104 S.W.3d 475, 479 (Tenn. 2003). "A Rule 60.02 motion for relief from a judgment is within the sound discretion of the trial court and the court's ruling on a Rule 60.02 motion may not be reversed on appeal unless it is determined that the court abused its discretion." *Holiday v. Shoney's South, Inc.*, 42 S.W.3d 90, 92 (Tenn. Ct. App. 2000) (citations omitted); *see also Turner v. Turner*, 473 S.W.3d 257, 268 (Tenn. 2015). An abuse of discretion occurs only when the trial court has "applied an incorrect legal standard, or reached a decision which is against logic or reasoning that caused an injustice to the party complaining." *Henry*, 104 S.W.3d at 479 (citations omitted). "The abuse of discretion standard does not permit an appellate court to merely substitute its judgment for that of the trial court." *Id.*

## IV. DISCUSSION

### A. & B.

On appeal, Defendants contend that the trial court erred in denying their motion to set aside the default judgment pursuant to Tennessee Rule of Civil Procedure 60.02. They suggest that, based on the arguments made at the hearing, the trial court “seems to have applied” an incorrect standard when denying their motion. Defendants further argue that the order appealed from does not explain the trial court’s reasoning or provide any basis for the trial court’s decision.

“When a party against whom a judgment for affirmative relief is sought has failed to plead or otherwise defend as provided by these rules and that fact is made to appear by affidavit or otherwise, judgment by default may be entered” in accordance with Tennessee Rule of Civil Procedure 55.01. Tenn. R. Civ. P. 55.01. Tennessee Rule of Civil Procedure 55.02 states that “[f]or good cause shown the court may set aside a judgment by default in accordance with Rule 60.02.” Rule 60.02 permits a party to ask to set aside a judgment upon a showing of “excusable neglect.” In the context of excusable neglect, the trial court must determine (1) whether the default was willful, (2) whether the defendant has a meritorious defense, and (3) the level of prejudice that may occur to the non-defaulting party if relief is granted. *Discover Bank v. Morgan*, 363 S.W.3d 479, 491–92 (Tenn. 2012).

Although courts construe Rule 60.02 “with liberality to afford relief from a default judgment,” the movant bears the burden of showing “why the movant was justified in failing to avoid the . . . neglect.” *Tenn. Dep’t of Human Servs. v. Barbee*, 689 S.W.2d 863, 866–67 (Tenn. 1985) (quoting *Tenn. State Bank v. Lay*, 609 S.W.2d 525, 527 (Tenn. Ct. App. 1980)). “The first element—willfulness—is a threshold inquiry when a party seeks relief from a default judgment based on excusable neglect.” *In re Justin A.H.*, No. M2013-00292-COA-R3-CV, 2014 WL 3058439, at \*14 (Tenn. Ct. App. June 7, 2014) (citing *Discover Bank*, 363 S.W.3d at 493–94). “If the court finds that the defaulting party has acted willfully, the judgment cannot be set aside on ‘excusable neglect’ grounds, and the court need not consider the other factors.” *Discover Bank*, 363 S.W.3d at 494. Making “deliberate choices” amounts to willful conduct. *Id.* at 493.

The trial court’s August 12, 2021 order denying Defendants’ motion to set aside the default judgment reads:

This cause came on for hearing on the Motion to Set Aside Default Judgment of Defendants in the above-entitled cause on July 29, 2021 at 9:00 a.m., with attorneys for Plaintiff and Defendants appearing for same. After review of the record and consideration of the arguments presented, this Court finds that

no excusable neglect on behalf of Defendants exists sufficient to set aside the Default Judgment. IT IS HEREBY ORDERED that Defendants' Motion to Set Aside Default Judgment is hereby denied.

The March 28, 2022 order appealed from states only “that Defendants’ Motion to Set Aside Default Judgment is hereby denied.” Neither order contains findings of fact and conclusions of law in support of the trial court’s decision. We cannot discern what legal standard or reasoning the trial court applied. Tennessee Rule of Civil Procedure 52.01 requires that “[i]n all actions tried upon the facts without a jury, the court shall find the facts specially and shall state separately its conclusions of law and direct the entry of the appropriate judgment.” Tenn. R. Civ. P. 52.01. The requirement to make findings of fact and conclusions of law on each cause of action is “not a mere technicality” but rather, serves the important purpose of “facilitat[ing] appellate review.” *In re K.H.*, No. W2008-01144-COA-R3-PT, 2009 WL 1362314, at \*8 (Tenn. Ct. App. May 15, 2009). When a trial court does not explain the basis of its ruling, we are hampered in performing our reviewing function, and we may remand the case with instructions to make requisite findings of fact and conclusions of law and enter judgment accordingly. *See In re Noah J.*, 2015 WL 1332665 at \*5–6 (Tenn. Ct. App. Mar. 23, 2015). As such, we vacate the trial court’s judgment and remand this matter to the trial court for findings of fact and conclusions of law to facilitate appellate review.

## V. CONCLUSION

For the reasons stated above, we vacate the trial court’s decision. The case is remanded for further proceedings consistent with this opinion. Costs of the appeal are taxed to the appellee, Conserv Equipment Leasing, LLC.

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JOHN W. McCLARTY, JUDGE